



Comptroller General
of the United States

Washington, D.C. 20548

Seubert

Decision

Matter of: Abar Ipsen Industries

File: B-237273

Date: October 30, 1989

DIGEST

1. Since the Small Business Administration determines whether a firm is small and disadvantaged for purposes of eligibility for Department of Defense small disadvantaged business (SDB) evaluation preference, the General Accounting Office will not consider a protest challenging awardee's SDB eligibility status for award of a contract.

2. Protest of agency's termination of a contract because it inadvertently failed to apply a small disadvantaged business (SDB) evaluation preference contained in the solicitation is dismissed where the protester, which is not an SDB firm, does not allege that the initial award to it was in fact proper or that award to the SDB firm was inconsistent with the evaluation criteria.

DECISION

Abar Ipsen Industries protests the determination of the Department of the Army to terminate for the convenience of the government a contract awarded to Abar under request for proposals (RFP) No DAAC83-89-R-0006, and the subsequent award to a self-certified small disadvantaged business (SDB), G-M Enterprises.

We dismiss the protest.

The RFP was issued December 23, 1988, and sought offers for heat treating and brazing furnaces. The RFP essentially provided that award would be made to the low, technically acceptable offeror. The RFP further provided that "[a]fter all other evaluation factors described in this solicitation are applied, offers will be evaluated by adding a factor of ten percent (10 %) to offers from concerns that are not [SDB] concerns" On September 11, 1989, the agency made award to the protester, which is not an SDB firm.

046927/139873

The agency states that subsequent to the award, G-M, another offeror under the RFP, called the contracting officer to inquire whether the 10 percent factor had been applied to Abar's offer. The agency advised G-M that the factor was mistakenly not used in the evaluation of offers. The agency reevaluated the offers and applied the evaluation preference. Under that evaluation G-M's offer, not Abar's, was low. A stop work order was sent to Abar on September 25, 1989, advising it of the error and of a forthcoming termination for convenience of its contract. The agency awarded the contract to G-M on September 27. This protest followed.

The protester first contends that G-M does not qualify as an SDB. However, we generally will not review a protest challenging a firm's SDB eligibility. See Caltech Service Corp., B-234424, May 1, 1989, 89-1 CPD ¶ 414. Rather, the Small Business Administration (SBA) determines SDB status. 54 Fed. Reg. 10271 (1989). Under Department of Defense (DOD) regulations, an SDB eligibility protest must be filed with the contracting officer who then forwards the protest to the SBA for a conclusive determination. DOD Federal Acquisition Regulation Supplement (DFARS) § 219.302 (1988 ed.). Accordingly, we dismiss this issue.

Next, Abar contends that it was improper for the agency to terminate this negotiated contract based on an application of the SDB evaluation preference. We find the Army's actions proper. It is clear from the record that the original award to Abar occurred because the agency failed to apply the SDB evaluation provided for in the RFP. As stated, the Army subsequently determined that it erred in not applying the preference. Other than objecting to the SDB status of G-M, which, as stated above, our Office does not review, the protester does not dispute the agency's finding that award to G-M was consistent with and required by the RFP evaluation criteria. In this regard, it is appropriate for the government to protect the integrity of the competitive system by terminating an improper award. Allied Trailer Sales & Rentals, B-224816.2, Nov. 5, 1986, 86-2 CPD ¶ 522.

The protest is dismissed.



Ronald Berger
Associate General Counsel